

**UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**EDDIE J. HAYNES,** )  
                                )  
**PLAINTIFF,**             )  
                                )  
**vs.**                         ) **CASE NO. 2:06-cv-1093-WKW**  
                                )  
**CITY OF MONTGOMERY, ALABAMA,** )  
                                )  
**DEFENDANT.**             )

**MOTION TO COMPEL DISCOVERY AND FOR EXTENSION OF TIME**

Comes now the Plaintiff, Eddie J. Haynes, and moves the Court to enter an Order compelling Defendant, City of Montgomery, Alabama, to fully respond to, and fully produce all documents requested in, Plaintiff's Second Request for Production of Documents to Defendant and to extend the time for Plaintiff to file its Response Brief and Evidentiary Submission in Opposition to Defendant's pending Motion for Summary Judgment until twenty-one days after Defendant has fully responded and produced at the office of Plaintiff's attorney all documents requested in Plaintiff's said discovery request. In support of this Motion, Plaintiff avers as follows:

1. Plaintiff's attorney certifies that, prior to the filing of this Motion, Plaintiff's attorney has attempted to confer with Defendant's attorney concerning the failure of Defendant to respond to the discovery request identified herein in an effort to obtain said discovery without court action, but Plaintiff's attorney has not been able to obtain voluntary compliance.

2. On October 23, 2007 Plaintiff served on Defendant Plaintiff's Second Request for Production of Documents to Defendant. A copy of that discovery request is attached hereto as Exhibit A.

3. More than thirty days have elapsed since service of said discovery request, but Defendant has wholly failed to respond to the discovery request, thus waiving all objections.

4. Said discovery request was filed more than thirty days prior to the December 3, 2007 deadline for dispositive motions in this case, so that Plaintiff would be able to obtain this necessary discovery, which is a supplement and follow up to prior discovery, in order to respond to Defendant's then - anticipated motion for summary judgment.

5. On December 3, 2007, Defendant filed a Motion for Summary Judgment, which is now pending. Under this Court's prior Briefing Order, Plaintiff's Response Brief and Evidentiary Submission is due twenty-one days after the date the motion was filed, i.e., December 24, 2007.

6. Plaintiff is entitled to a full response to the pending discovery request and is entitled to all documents requested. The documents are relevant in light of the arguments Defendant has made in its Motion for Summary Judgment and Plaintiff needs those documents to adequately respond to the Motion for Summary Judgment. Fundamental fairness and justice require that Defendant be required to produce the documents requested by a date certain and Plaintiff be allowed twenty-one days after that date to file its responsive brief and evidentiary submission in opposition to the Motion for Summary Judgment.

/s/ Gerald L. Miller  
GERALD L. MILLER (MIL039)  
Attorney for Plaintiff

**OF COUNSEL:**

REDDEN, MILLS & CLARK, LLP  
505 North 20<sup>th</sup> Street  
940 Financial Center  
Birmingham, Alabama 35203  
(205) 322-0457

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of December, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Allison H. Highley  
Kimberly O. Fehl  
Assistant City Attorney  
City of Montgomery  
P.O. Box 1111  
Montgomery, Alabama 36101-1111

/s/ Gerald L. Miller  
OF COUNSEL

UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
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EDDIE J. HAYNES, )  
vs. )  
PLAINTIFF, )  
) )  
CITY OF MONTGOMERY, ALABAMA, )  
vs. )  
DEFENDANT. ) )  
CASE NO. 2:06-cv-1093-WKW

**PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF  
DOCUMENTS TO DEFENDANT**

Comes now the Plaintiff, Eddie J. Haynes, and requests the Defendant, City of Montgomery, Alabama, to permit the Plaintiff to inspect and to copy the following documents in accordance with the Federal Rules of Civil Procedure:

1. Any and all documents discussing or relating to the alleged practice of the Montgomery Fire Department of looking to the National Fire Protection Association Rules and Regulations as a guideline for best practices, as stated in Defendant's Amended Response to Plaintiff's First Interrogatories (Amended Response#4).
2. All documents, including policies, memoranda, and correspondence, which discuss the National Fire Protection Association Rules and Regulations.
3. All documents in your possession relating to the twelve fit for duty evaluations referred to in the attached November 10, 2005 letter from Kimberly O. Fehl to Sandra Figgers, including all documents reflecting the reasons for those fit for duty evaluations, and the results of those fitness for duty evaluations.
4. The City of Montgomery Motor Vehicle Operation Policy and all amendments thereto



in effect from 2000 through 2006.

5. All documents reflecting procedures for certifying employees of the City of Montgomery to operate City vehicles and all amendments to such procedures for the period from 2000 through 2006.

6. The City of Montgomery Drug and Alcohol Abuse Policy and all amendments thereto in effect from 2000 through 2006.

Gerald L. Miller

Gerald L. Miller

Attorney for Plaintiff, Eddie J. Haynes

**OF COUNSEL:**

REDDEN, MILLS & CLARK, LLP  
940 Financial Center  
505 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203  
(205) 322-0457

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the above and foregoing by placing same in the United States Mail, postage prepaid and properly addressed, upon the following:

Allison H. Highley  
Kimberly O. Fehl  
Assistant City Attorney  
City of Montgomery  
P.O. Box 1111  
Montgomery, Alabama 36101-1111

on this the 23<sup>rd</sup> day of October, 2007.

Gerald L. Miller  
Of Counsel

## WALTER R. BYARS

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November 10, 2005

Sandra Figgers  
 EEOC Birmingham District Office  
 Ridge Park Place  
 1130-22nd Street South  
 Birmingham, AL 35205

**Re: Supplement to Statement of Respondent Submitted 6/13/05, Eddie Haynes v. City of Montgomery, Charge No. 130-2005-04376**

Dear Ms. Figgers:

Enclosed per your request are directions to headquarters for the Montgomery Fire Department. I have also enclosed a list of the names of the employees for your verification that you have indicated to me that you wanted to interview.

Additionally, enclosed is a supplement to our response that references the matters we discussed regarding the fact that Mr. Haynes notified the City of the medications that he was taking on March 4, 2005. Haynes identified more medications than indicated by the release letter by Dr. Clemmie Palmer dated March 4, 2005. Haynes admitted in an unemployment compensation hearing that Dr. Palmer did not know all of the medications that he was taking because all of the medications had not been prescribed by Dr. Palmer.

Finally, after our telephone conversation last week, I contacted Risk Management to inquire as to the number of employees sent for fit for duty evaluations. The records indicate 12 fit for duty evaluations since November 2004. Five of the employees sent for evaluation were from the Montgomery Fire Department of which three are black and two are white.

Please let me know if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "K. O. Fehl". Below the signature, the name "Kimberly O. Fehl" is printed in a smaller, sans-serif font.

KOF:ms